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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/763,870	01/23/2004	Bruce A. Rogers	ROG030.10001	8527

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EXAMINER

DOAN, ROBYN KIEU

ART UNIT	PAPER NUMBER
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3732

MAIL DATE	DELIVERY MODE
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10/17/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/763,870	Applicant(s) ROGERS, BRUCE A.	
	Examiner Robyn Doan	Art Unit 3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 November 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|----------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>1/22/08</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Applicant's response filed 11/09/2007 has been entered and carefully considered. Arguments regarding the 35 U.S.C. 102 (b) and 103 (a) have not been found to be persuasive, therefore, claims 1-20 are rejected under the same ground rejections as set forth in the office action mailed 8/7/07.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 5-10, 12-14 and 17-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Takashima (IDS cited reference).

With regard to claims 1, 6, 8-9, Takashima discloses a hair holding device (figs. 14-15) comprising a first body member (40a), a second body member (40b), the first and second body members having gripping portions (see attachment A), a hinge means (16) for pivotally connecting the first and second body members and an elastomeric means comprising at least one continuous elastomeric band (50) contacting the first and second body members in a looped configuration (fig. 15), the elastomeric means in contact with the first and second body members for biasing the first and second body

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members into a closed position (col. 9, lines 62-65). The device also having means (41, fig. 14) for removably connecting the elastomeric band to the first and second body members. In regard to claims 2-3, 5 and 12, Takashima discloses the elastomeric means having at least one finite length (14) elastomeric strand having a first and second end (fig. 3), means (figs. 12 shows the elastic band with knots) at the first and second ends for connecting the at least elastomeric strand to the first and second body and means for removably connecting the at least elastomeric strand to the first and second body (col. 2, lines 44-47, it is also noted that a different embodiment has been shown with regard to claims 2-3, 5 and 12, however, the changes of this particular embodiment are inherently used in all of the embodiments). In regard to claims 13-14, the device further having a torsion spring (25) having a first end contacting the first body member and the second end contacting the second body member (fig. 7). In regard to claims 17-19, the at least one of the first end second body members comprising at least one protrusion (21) being at least one connecting lug (fig. 10a) extending from a hinge axis of the hinge means. In regard to claim 20, the device shown by Takashima will perform the method recited in the claims during normal operational use of the device.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 15-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Takashima in view of Mooneyhan (4554934).

With regard to claims 15-16, Takashima discloses a hair holding device comprising all the claimed limitations in claims 1 and 14 as discussed above except for the first and second body members having handle portions. Mooneyhan discloses a hair holding device (fig. 2) comprising a first and second body members (13, 21) which comprise handle portions (41, 47), a torsion spring (37) having a first end being in contact with the handle portion (41) of the first body member and a second end also being in contact with the handle portion (47) of the second member. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the handle portions as taught by Mooneyhan into the hair holding device of Takashima for the purpose of providing handle portions to enhance the movement of the body members in closed or open position.

Claims 4, 7 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Takashima.

With regard to claims 4, 7 and 11, Takashima discloses a discloses a hair holding device comprising all the claimed limitations in claim 1 as discussed above except for the elastomeric means being permanently connected to the first and second members and means for permanently connecting the at least one elastomeric band to the first and second body members. It would have been obvious to one having an

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ordinary skill in the art at the time the invention was made to form the elastomeric means being permanently connected to the first and second members and means for permanently connecting the at least one elastomeric band to the first and second body members, since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art.

Response to Arguments

Applicant has argued that the recitation of the elastomeric means for biasing the first and second bodies into a closed position in col. 9, lines 62-65 was applied for another embodiment other than for the embodiment in figures 14 and 15. It is agreed; however, Applicant is noted that the elastomeric means (50) of figures 14 and 15 is capable of biasing the first and second body members into a closed position; further, the elastomeric means (50), the first and second bodies (100a, 100b) of figure 22 recited in col. 9, lines 62-65 are similar to the ones in figures 14 and 15, therefore, the elastomeric means (50) of figures 14,15 would bias the first and second bodies into a closed position the same way as described in col. 9, lines 62-65.

In response to applicant's argument that Takashima device does not secure hair when open, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robyn Doan whose telephone number is (571) 272-4711. The examiner can normally be reached on Mon-Fri 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on (571) 272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robyn Doan/
Primary Examiner, Art Unit 3732